



PATENT

Attorney Docket No. 5350/54771

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Hugunin )  
Serial No.: 09/739,718 ) Examiner D. Rosenthal  
Filed: December 18, 2000 ) Art Unit: 3644  
For: SCENT TAB FOR FISHING )  
LURE )

Assistant Commissioner of  
Patents  
Washington, D.C. 20231

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage paid, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on June 12, 2003.

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Charles T. Riggs, Jr., Reg. No. 57,430

6-12-03  
Date

APPELLANT'S BRIEF

Sir:

In support of Applicant's appeal, and in accordance with 37 CFR 1.192(a), Applicant herein submits, in triplicate, this Appellant's Brief in response to the Final Office Action mailed September 12, 2002 and the Advisory Action mailed March 6, 2003.

I. Real Party in Interest

Land O Lakes Tackle Co. of Land O Lakes, Wisconsin has an interest in this application.

II. Related Appeals and Interferences

There are no related appeals or interferences known to

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appellant or appellant's legal representative which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

### **III. Status of Claims**

Claims 18, 20-24 and 26-32 are pending in this application. Claims 18, 20-24 and 26-32 as set forth in Appendix A, have been finally rejected for the reasons set forth in the Office Action mailed September 12, 2002, as maintained in the Advisory Action of March 6, 2003. Claims 18, 20-24 and 26-32 are the claims being appealed.

### **IV. Status of Amendments**

The Amendment filed after the final rejection, on February 12, 2003, has been entered by the Examiner.

### **V. Summary of Invention**

The claims of this application are drawn to a fishing lure having a scent receiving element attached thereto. In one embodiment (see Figure 6), the fishing lure is a "spoon" lure 50a having at least one attachment cavity 52a for suitably attaching a scent receiving element 20a. The scent receiving element thus is embedded in the plane of the spoon, accessible from both sides, and

does not interfere with the performance of the lure.

In another embodiment (see Figures 11A and 11B), the fishing lure is a "jig" lure 50f and 50g, respectively, having a scent receiving element 20f and 20g, respectively, attached at the hook end of the jig. The elements 20f and 20g are sized to the back end of the jigs to conform to the contour of the jigs, and do not interfere with the performance of the jig.

## **VI. Issues**

- 1) Whether Claims 18, 20, 21, 26 and 28-31 are anticipated under 35 U.S.C. §102(e) by Mooers, U.S. Patent No. 6,061,947, as rejected in the Final Office Action mailed September 12, 2002, and as maintained in the Advisory Action of March 6, 2003.
- 2) Whether Claims 18, 20, 21, 26 and 28-31 are anticipated under 35 U.S.C. §102(e) by Monticello et al., U.S. Patent No. 6,301,823, as rejected in the Final Office Action mailed September 12, 2002, and as maintained in the Advisory Action of March 6, 2003.
- 3) Whether Claims 23, 24, 27 and 32 are clearly anticipated under 35 U.S.C. §102(b) by Walker, U.S. Patent No. 4,962,609, as rejected in the Final Office Action mailed September 12, 2002, and as maintained in the Advisory

Action of March 6, 2003.

- 4) Whether Claim 22 is unpatentable under 35 U.S.C. §103(a) over Mooers, U.S. Patent No. 6,061,947, as rejected in the Final Office Action mailed September 12, 2002, and as maintained in the Advisory Action of March 6, 2003.

#### VII. Grouping of Claims

None of the claims stand or fall together.

#### VIII. Argument

- 1) Whether Claims 18, 20, 21, 26 and 28-31 are anticipated under 35 U.S.C. §102(e) by Mooers, U.S. Patent No. 6,061,947, as rejected in the Final Office Action mailed September 12, 2002, and as maintained in the Advisory Action of March 6, 2003.

Claims 18, 20, 21, 26 and 28-31 have been rejected under 35 U.S.C. §102(e) as being anticipated by Mooers. For the following reasons, the Examiner's rejection is respectfully traversed.

Mooers does not anticipate, or even makes obvious, Applicant's claimed lure, as required under the law pertaining to 35 U.S.C. §102.

[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim**. ... The issue is decided by identifying the elements of the claims, **determining their meaning in light of the specification** and prosecution history, and identifying corresponding elements disclosed in the allegedly

anticipating reference....(citations omitted) Idacon Inc. v. Central Forest Products Inc., 3 USPQ2d 1079, 1089 (ED Ok 1986).

Claims 18, 20, 21, 26 and 28-31 relate to the embodiment illustrated in Figure 6 of Applicant's disclosure. Independent Claim 18 is directed to a spoon type fishing lure, with a scent receiving element in the spoonlike body portion, and further requires that the plane of the scent receiving element is coplanar with the plane of the body portion. In this manner, the surface of the lure is continuous and smooth and does not interfere with the motion of the lure (Claims 30 and 31). The scent receiving element is directly accessible from both sides of the lure (Claim 20). The scent receiving element is sized and shaped to conform to the size and shape of the cavity (Claim 29) and is held thereto by means for securing (Claim 21) which allow for repeated attachment/removal without the need to alter the lure (Claim 26), and wherein the scent receiving element remains unobstructed (Claim 28).

Mooers does not anticipate or make obvious any of these claimed features of Applicant's invention. Mooers is not a spoon lure, as is commonly known in the art of fishing. In fishing, a spoon lure is generally known to be a single, curved body with a hook at the end. Mooers is a two piece lure wherein the two pieces are set perpendicular to each other. While the horizontal body portion 44 has a profile or outline of a "spoon" shape, it does not

equate to what is traditionally known in the art of fishing as a spoon. Even if it could be considered a spoonlike body, it does not even receive the scent receiving element. Mooers places its scent bladder in a housing in the vertically disposed fin-like body portion 46 which is not spoonlike.

Further, Mooers' scent bladder, while having flat end walls defining planes which may be parallel to the plane of the body portion 46 (if placed precisely in housing 38), in no way defines a plane which is coplanar with the body. Coplanar means the same plane. Parallel planes are not coplanar, they are different planes. Similarly, as can be seen in Figure 4 of Mooers, because Mooers' bladder is approximately four times the width of the fin portion 46, it cannot be said to be sized and shaped to conform to the size and shape of the cavity. Also for this reason, Mooers' scent bladder does not cooperate with the body to define a smooth and continuous surface, and as such, Mooers' scent bladder would interfere with the motion of the lure.

Still further, unlike Applicant's scent receiving element, Mooers' scent bladder is not directly accessible from both (or either) side. Instead, it is only indirectly "accessible" through the housing 38 (apparently opening from one side only), which essentially precludes applying scent to the scent bladder until the scent bladder is removed from the housing 38. Similarly, Mooers'

bladder is inside the housing 38 and is thus not unobstructed. It is obstructed by the housing 38.

Additionally, Applicant's means for securing attaches the scent receiving element to the body portion, unlike Mooers in which the bladder is not attached to the fin portion 46, but instead is enclosed in housing which in turn is attached to the fin portion 46. Also, Applicant's scent receiving element is attached and removed without the need to alter the lure. Mooers' lure must be altered to place or remove the scent bladder in the housing, i.e., flap 54 must be manipulated.

Accordingly, for the above stated reasons, Mooers fails to anticipate Applicant's Claims 18, 20, 21, 26 and 28-31. Reconsideration and removal of this rejection is respectfully requested, as is an early notice of allowance.

- 2) Whether Claims 18, 20, 21, 26 and 28-31 are anticipated under 35 U.S.C. §102(e) by Monticello et al., U.S. Patent No. 6,301,823, as rejected in the Final Office Action mailed September 12, 2002, and as maintained in the Advisory Action of March 6, 2003.

Claims 18, 20, 21, 26 and 28-31 have been further rejected under 35 U.S.C. §102(e) as being anticipated by Monticello et al. For the following reasons, the Examiner's rejection is respectfully traversed.

Monticello et al. does not anticipate, or even makes obvious, Applicant's claimed lure, as required under the law pertaining to

35 U.S.C. §102. Again,

[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim**. ... The issue is decided by identifying the elements of the claims, **determining their meaning in light of the specification** and prosecution history, and identifying corresponding elements disclosed in the allegedly anticipating reference....(citations omitted) Idacon Inc. v. Central Forest Products Inc., 3 USPQ2d 1079, 1089 (ED Ok 1986).

Claims 18, 20, 21, 26 and 28-31 relate to the embodiment illustrated in Figure 6 of Applicant's disclosure. Independent Claim 18 is directed to a spoon type fishing lure, with a scent receiving element in the spoonlike body portion, and further requires that the plane of the scent receiving element is coplanar with the plane of the body portion. In this manner, the surface of the lure is continuous and smooth and does not interfere with the motion of the lure (Claims 30 and 31). The scent receiving element is directly accessible from both sides of the lure (Claim 20). The scent receiving element is sized and shaped to conform to the size and shape of the cavity (Claim 29) and is held therein by means for securing (Claim 21) which allow for repeated attachment/removal without the need to alter the lure (Claim 26), and wherein the scent receiving element remains unobstructed (Claim 28).

Monticello et al. does not anticipate or make obvious any of these claimed features of Applicant's invention. While Monticello



et al. is a "spoon" lure, it admittedly is a "unique" spoon that is substantially different from what is commonly known in the art of fishing as a spoon. In fishing, a spoon lure is generally known to be a single, flat, curved, rigid metal body with a hook at the end. Monticello et al. is a two piece lure including a pliable core encased within a soft rubber body, presenting a thick oval or semi-circular configuration, as shown in Figures 3, 6, and 7D. This does not equate to what is traditionally known in the art of fishing as a spoon.

Further, Monticello et al.'s scent receiving element is wholly embedded inside the body of the lure and does not extend to either the top or bottom surface. As such, it cannot be said that the scent receiving is coplanar with the body. Because Monticello et al.'s lure is not flat, it does not define a single plane as does Applicant's. Instead it defines two separate planes on its top and bottom surface. Nonetheless, Monticello et al.'s scent receiving element is not coplanar with either of the planes defined by its surface, and simply cannot anticipate Applicant's claims as defined by its specification. Also for this reason, Monticello et al.'s scent receiving element does not cooperate with the body to define a smooth and continuous surface. Again, the scent receiving element does not extend to either surface and thus cannot cooperate to define a smooth and continuous surface, as defined by Applicant's

claims.

Still further, unlike Applicant's scent receiving element, Monticello et al.'s scent receiving element is not directly accessible from both (or either) side. Instead, it is only indirectly "accessible" through the coating 8, which essentially precludes applying scent to the scent bladder without an injection implement. Similarly, Monticello et al.'s scent receiving element is inside the lure and is thus not unobstructed. It is obstructed by the surrounding core 10 and coating 8.

Additionally, Applicant's means for securing attaches the scent receiving element to the body portion, unlike Monticello et al. in which the scent receiving element <sup>^</sup>apparently simply rests in its port, without being attached to the body portion. In fact, it would not need to be attached or secured because it is completely enclosed therein. Also, Applicant's scent receiving element is attached and removed without the need to alter the lure. Monticello et al.'s lure must be altered (disassembled or torn apart) to place or remove the scent receiving element inside of the lure.

Accordingly, for the above stated reasons, Monticello et al. fails to anticipate Applicant's Claims 18, 20, 21, 26 and 28-31. Reconsideration and removal of this rejection is respectfully requested, as is an early notice of allowance.

- 3) Whether Claims 23, 24, 27 and 32 are clearly anticipated under 35 U.S.C. §102(b) by Walker, U.S. Patent No. 4,962,609, as rejected in the Final Office Action mailed September 12, 2002, and as maintained in the Advisory Action of March 6, 2003.

Claims 23, 24, 27 and 32 have been rejected under 35 U.S.C. §102(b) as being clearly anticipated by Walker. For the following reasons, the Examiner's rejection is respectfully traversed.

Walker does not anticipate, or even makes obvious, Applicant's claimed lure, as required under the law pertaining to 35 U.S.C. §102. Again,

[A]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, **arranged as in the claim**. ... The issue is decided by identifying the elements of the claims, **determining their meaning in light of the specification** and prosecution history, and identifying corresponding elements disclosed in the allegedly anticipating reference....(citations omitted) Idacon Inc. v. Central Forest Products Inc., 3 USPQ2d 1079, 1089 (ED Ok 1986).

Claims 23, 24, 27 and 32 relate to the embodiment illustrated in Figures 11A and 11B of Applicant's disclosure. Independent Claim 23 is directed to a lure, wherein a scent receiving element is attached to and extends from the end of the lure in such a manner that the scent receiving element conforms to the contour (perimeter) of the lure. Thus, the lure body and the scent receiving element cooperate to define a continuous and smooth surface (Claim 32), and as such the scent receiving element does

not interfere with the motion of the lure (Claim 24). Claim 27 specifically requires the lure to be a jig (as shown in Figures 11A and 11B).

Walker does not anticipate or make obvious any of these claimed features of Applicant's invention. Walker places scent receiving material in the sides of a lure, not at the end. Further, the scent receiving material does not extend from any part of the lure. Clearly, as arranged in the claim and defined by the specification, Walker does not even come close to anticipating Applicant's claims. (See Idacon Inc., *supra*). Sides are not ends. In fact, Walker defines its forward end at 12, and thus its back end at 14, and further defines the scent receiving material as being on the sides of the lure, not the end. Walker unquestionable does not disclose a scent receiving element on the end of the lure.

As such, Walker does not disclose conforming a scent receiving element to the end contour or perimeter of the lure (as in Claim 23), which does not interfere with the motion of the lure (as in Claim 24), and which cooperates with the body portion to define a continuous and smooth surface (as in Claim 32). Further, as is commonly known in the art of fishing, Walker is clearly not a jig (as in Claim 27).

Accordingly, for the above stated reasons, Walker unquestionably fails to anticipate Applicant's Claims 23, 24, 27

and 32. Reconsideration and removal of this rejection is respectfully requested, as is an early notice of allowance.

- 4) Whether Claim 22 is unpatentable under 35 U.S.C. §103(a) over Mooers, U.S. Patent No. 6,061,947, as rejected in the Final Office Action mailed September 12, 2002, and as maintained in the Advisory Action of March 6, 2003.

Claim 22 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Mooers. For the following reasons, the Examiner's rejection is respectfully traversed.

Claim 22 is dependent from Claim 18. As discussed above, the Mooers reference does meet the limitations in Claim 18 related to the scent receiving element. Claim 22 requires a plurality of the scent receiving elements of Claim 18. As such, the Mooers reference is similarly deficient with respect to Claim 22. This would be true even if Mooers disclosed, taught or suggested the use of a plurality of scent receiving elements, which it does not, nor would it have been obvious to do so in view of Mooers.

Accordingly, for the above stated reasons, Mooers unquestionably fails to make obvious Applicant's Claim 22. Reconsideration and removal of this rejection is respectfully requested, as is an early notice of allowance.

### Conclusion

Accordingly, Applicant respectfully asserts that the Examiner's rejection of Claims 18, 20-24 and 26-32 are inappropriate. Applicant respectfully requests that the Examiner's rejections be overturned, and that Claims 18, 20-24 and 26-32 be passed to allowance.

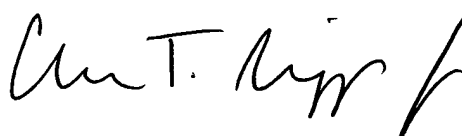
The appeal brief fee and extension of time fee are submitted herewith via Credit Card Payment Form PTO-2038. However, the Commissioner is hereby authorized to charge this fee, if there is any problem with the credit card payment, or any additional fees which may be required to Deposit Account No. 16-0657.

A request for a two month extension of time is enclosed.

A postcard is enclosed evidencing receipt of the same.

Respectfully submitted,

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## APPENDIX A

18. (Unchanged) A fishing lure, comprising:

a spoonlike body portion;

at least one cavity formed in said body portion; and

a scent receiving element located in said at least one cavity, wherein said body portion defines a plane and said scent receiving element defines a plane, and said scent receiving element being embedded in said body portion such that said plane of said scent receiving element is coplanar with said plane of said body portion.

20. (Unchanged) The fishing lure of Claim 18, wherein said body portion defines two sides, and said scent receiving element being directly accessible from both sides.

21. (Unchanged) The fishing lure of Claim 18, further comprising means for securing said scent receiving element in said at least one cavity.

22. (Unchanged) The fishing lure of Claim 18, wherein said at least one cavity is a plurality of cavities, each receiving a scent receiving element.

23. (Amended) A fishing lure comprising:

a body portion having an end, said end defining a contour; and

a scent receiving element attached to and extending from said end of said body portion, said scent receiving element adapted to conform to the contour of said end of said body portion.

24. (Unchanged) The fishing lure of Claim 23, wherein said scent receiving element does not interfere with the motion of said lure.

26. (Amended) The fishing lure of Claim 21, wherein said means for securing allows for repeated, selected attachment and removal of said scent receiving element to and from said body portion without the need to alter said lure.

27. (Unchanged) The fishing lure of Claim 23, wherein said fishing lure is a jig.

28. (Unchanged) The fishing lure of Claim 18, wherein said scent receiving element is unobstructed.

29. (Unchanged) The fishing lure of Claim 18, wherein said scent receiving element is sized and shaped to conform to a size and shape of said at least one cavity.

30. (Unchanged) The fishing lure of Claim 18, wherein said scent receiving element does not interfere with the motion of said lure.

31. (Unchanged) The fishing lure of Claim 18, wherein said body portion and said scent receiving element cooperate to define a continuous and smooth surface.

32. (Unchanged) The fishing lure of Claim 23, wherein said body portion and said scent receiving element cooperate to define a continuous and smooth surface.